

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

PUGET SOUND ELECTRICAL  
WORKERS HEALTH AND  
WELFARE TRUST, et al.,

Plaintiffs,

v.

LIGHTHOUSE ELECTRICAL  
GROUP, et al.

Defendants.

CASE NO. C12-276 RAJ

ORDER

**I. INTRODUCTION**

This matter comes before the court on a motion to dismiss by defendant Travelers Casualty and Surety Company of America (“Travelers”) and Jody Miller Construction, Inc. (“JMC”) (collectively, “defendants”). Dkt. # 47. Plaintiffs Puget Sound Electrical Workers Healthcare Trust, Puget Sound Electrical Workers Pension Trust, Puget Sound Electrical Joint Apprenticeship & Training Trust, and National Electrical Benefit Fund (the “Trust Funds” or “plaintiffs”) oppose, largely arguing that the issues raised by defendants are not appropriate for a motion to dismiss, but rather, require an analysis on the merits for summary judgment. Dkt. # 50. Plaintiffs are largely mistaken. It is well

1 established that the court generally may not consider material beyond the pleadings in  
2 ruling on a motion to dismiss. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.  
3 2001). However, where documents are referenced extensively in the complaint, form the  
4 basis of plaintiffs' claim, or are subject to judicial notice, the court may consider those  
5 documents in the context of a motion to dismiss. *United States v. Ritchie*, 342 F.3d 903,  
6 908-09 (9th Cir. 2003). The court may take judicial notice of facts that are not  
7 reasonably subject to dispute because it is generally known within the trial court's  
8 territorial jurisdiction or can be accurately and readily determined from sources whose  
9 accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). Documents that are  
10 filed with the courts and are a matter of public record are exactly such facts that are  
11 subject to judicial notice. The court notes that the truth of factual matters asserted  
12 therein, however, are not properly subject to judicial notice. The court has addressed  
13 individual documents and facts below, where appropriate.

## 14 **II. BACKGROUND**

15 The claims against JMC and Travelers arise out of a construction project at Seattle  
16 Central Community College ("SCCC Project"). Dkt. # 19 (Am. Compl.) ¶¶ 3.52-3.58.  
17 JMC was the general contractor, and Lighthouse Electrical Group Limited Partnership  
18 ("Lighthouse") was the subcontractor from April 2010 through January 2012. *Id.* ¶ 3.52.  
19 Travelers, as surety, issued a Payment and Performance Bond to JMC to cover the SCCC  
20 Project. *Id.* ¶ 3.54. Lighthouse was a party to labor and trust agreements that required  
21 payment of contractual contributions to the Trust Funds. *Id.* ¶¶ 3.2-3.40. However,  
22 Lighthouse failed to pay the contributions as required by contract, entitling the Trust  
23 Fund to the unpaid fringe benefit contributions, liquidated damages, and accrued  
24 prejudgment interest. *Id.* ¶¶ 3.41-3.42

25 In January 2012, plaintiffs filed a Notice of Claim of Lien against the State of  
26 Washington as project owner, Travelers as surety, and JMC as general contractor. *Id.* ¶  
27 3.55. Plaintiffs filed this action in February 2012 against Lighthouse and Lighthouse

Electrical, Inc. alleging claims under the Employee Retirement Income Security Act (“ERISA”) and the Labor Management Relations Act (“LMRA”). Dkt. # 1. On May 5, 2012, plaintiffs filed a separate action in this court against JMC and Travelers seeking to foreclose lien claims under RCW 39.08 and 60.28. *Puget Sound Elec. Workers Health & Welfare Trust v. Travelers Cas. & Sur. Co. of Am.*, Case No. C12-789RAJ, Dkt. # 1. Plaintiffs alleged that the court had supplemental jurisdiction over that action based on this separate case. *Id.* ¶ 2.1. On January 9, 2013, this court disagreed, held that the court lacked subject matter jurisdiction, and dismissed that action. Case No. 12-789RAJ, Dkt. # 25. On January 11, 2013, Travelers filed a complaint for declaratory relief against the Trust Funds in King County Superior Court (“KCSC Case”).<sup>1</sup> Dkt. # 28 at 56-62 (Ex. 16 to Maxwell Decl.). In that case, Travelers sought a declaration that any rights of the Trust Funds to pursue claims against Travelers’ RCW 39.08 and RCW 60.28 payment and retainage bonds are preempted by ERISA. *Id.* at 62. On January 14, 2013, in this case, the Trust Funds moved the court to amend the complaint to add its state law claims against JMC and Travelers, and the court granted the motion on March 22, 2013. Dkt. ## 15, 18. The Trust Funds filed the amended complaint on April 3, 2013 (Dkt. # 19), served JMC with the summons and complaint on April 4 (Dkt. # 24), and served Travelers with the summons and complaint on April 5 (Dkt. # 23). In this action, plaintiffs seek to foreclose upon certain bond and retainage funds under RCW 39.08 and RCW 60.28.<sup>2</sup> Dkt. # 19 (Am. Compl.) ¶¶ 4.8-4.14

On May 7, 2013, the Honorable Mary I. Yu granted Travelers’ motion for judgment on the pleadings in the KCSC Case, concluding that the lien claims of the Trust Funds under RCW 39.04 and 60.28 against Travelers and its payment and performance bonds are barred by 29 U.S.C. § 1144 and the Washington Supreme Court. Dkt. # 33-1 at

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<sup>1</sup> JMC was not a party to the KCSC Case.

<sup>2</sup> RCW 39.08 requires contractors to retain a payment bond on public works projects. RCW 60.28 governs the retainage and foreclosure actions on liens.

2-3 (Ex. A to Blischke Decl.). On June 10, 2013, Judge Yu denied the Trust Funds' motion for reconsideration. Dkt. # 41, Ex. A.

This court previously denied plaintiffs' motion for summary judgment, finding that plaintiffs failed to demonstrate the absence of any element in defendants' defenses of res judicata and compulsory counterclaim. Dkt. # 45.

### III. ANALYSIS

#### A. Legal Standard

When considering a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), "the court is to take all well-pleaded factual allegations as true and to draw all reasonable inferences therefrom in favor of the plaintiff." *Wyller Summit P'ship v. Turner Broadcasting Sys., Inc.*, 135 F.3d 658, 663 (9th Cir. 1998). However, the complaint must indicate more than mere speculation of a right to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "[F]or a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949 (2009). Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

#### B. Res Judicata

"Whether a prior state court judgment precludes relitigation of an identical claim in federal court depends on the preclusion rules of the state." *Gupta v. Thai Airways Intern., Ltd.*, 487 F.3d 759, 765 (9th Cir. 2007). "This principle results from the statutory command in 28 U.S.C. § 1738 that 'judicial proceedings ... shall have the same full faith and credit in every court within the United States and its Territories and Possessions as

1 they have by law or usage in the courts of such State from which they are taken.”” *Id.*  
 2 ““This statute has long been understood to encompass the doctrine of res judicata, or  
 3 claim preclusion, and collateral estoppel, or issue preclusion.”” *Id.*

4 Under Washington law, a prior judgment will bar litigation of a subsequent claim  
 5 if the prior judgment has a concurrence of identity with the subsequent action in (1)  
 6 subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the  
 7 persons for or against whom the claim is made. *Gold Star Resorts, Inc. v. Futurewise*,  
 8 167 Wash. 2d 723, 737, 222 P.3d 791 (Wash. 2009). With respect to subject matter,  
 9 courts generally focus on the asserted theory of recovery rather than simply the facts  
 10 underlying the dispute. *Marshall v. Thurston County*, 165 Wash. App. 346, 353, 267  
 11 P.3d 491 (Wash. App. 2011).

12 A review of the complaints in both matters demonstrates that all the requirements  
 13 for res judicata have been met. Judge Yu’s order<sup>3</sup> granting Travelers’ motion for  
 14 judgment on the pleadings in the KCSC Case “is equivalent to a final judgment on the  
 15 merits and a valid basis for applying res judicata.” *Carpenters Health & Sec. Trust of*  
 16 *West. Wash. v. Paramount Scaffold, Inc.*, Case No. C12-1252RSM, 2013 WL 392717, \*3  
 17 (W.D. Wash. Jan. 31, 2013); *see also Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135  
 18 Wash. 2d 255, 264, 956 P.2d 312 (Wash. 1998) (“an appeal does not suspend or negate  
 19 the res judicata or collateral estoppel aspects of a judgment entered after trial in the  
 20 superior courts.”); *Lejeune v. Clallam*, 64 Wash. App. 257, 266, 823 P.2d 1144 (Wash.  
 21 App. 1992) (“judgment . . . becomes final for res judicata purposes at the beginning, not  
 22 the end, of the appellate process, although res judicata can still be defeated by later  
 23 rulings on appeal.”). The subject matter of both lawsuits between the Trust Funds and  
 24 Travelers involve plaintiffs’ lien claims against Travelers under RCW 39.04 and 60.28.

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26 <sup>3</sup> The court may properly take judicial notice of Judge Yu’s order and the KCSC  
 27 Complaint.

1 Dkt. # 19 (Am. Compl.) ¶¶ 3.53-3.58, 4.8-4.14; # 28 at 56-62 (KCSC Compl. ¶¶ 7-8, 13-  
 2 17). The cases allege essentially the same causes of action addressing whether plaintiffs  
 3 could foreclose on the lien and retainage bond pursuant to RCW 39.08 and 60.28. Dkt. #  
 4 19 (Am. Compl.) ¶¶ 4.8-4.14 (seeking to foreclose the lien and retainage bond pursuant  
 5 to RCW 39.08 and 60.28); # 28 at 56-62 (KCSC Compl. ¶¶ 25-26, at 7 ¶¶ 1-2 (seeking to  
 6 prevent foreclosure on the lien and retainage bond by alleging that RCW 39.08 and 60.28  
 7 are preempted by ERISA). Finally, Travelers and the Trust Funds are parties with the  
 8 same interests in both cases, and are both bound by Judge Yu's orders. Dkt. # 19 (Am.  
 9 Compl.) ¶¶ 1.1-1.4, 1.7; # 28 at 56-62 (KCSC Compl. ¶¶ 1-5). The fact that the case is  
 10 on appeal is irrelevant for purposes of determining whether res judicata applies. *See*  
 11 *Nielson*, 135 Wash. 2d at 264 ("an appeal does not suspend or negate the res judicata or  
 12 collateral estoppel aspects of a judgment entered after trial in the superior courts.").

13 The court notes that Judge Yu relied on *Int'l Brotherhood of Elec. Workers v. Trig*  
 14 *Elec. Constr. Co.*, 142 Wash. 2d 431, 13 P.3d 622 (Wash. 2000) in granting Travelers'  
 15 motion for judgment on the pleadings. However, the Washington Supreme Court  
 16 recently abrogated *Trig Electric*. *See W.G. Clark Const. Co. v. Pac. N.W. Regional*  
 17 *Council of Carpenters*, \_\_ P.3d \_\_, 2014 WL 1098013 (Wash. March 20, 2014)  
 18 (reversing *Trig Electric Construction* and holding that ERISA does not preempt statutes  
 19 like RCW 39.08 and 60.28). Regardless, the court has received no indication that Judge  
 20 Yu's judgment has been vacated. Accordingly, the state court judgment is considered a  
 21 "final judgment" for purposes of res judicata. *See Nielson*, 135 Wash. 2d at 263-64  
 22 ("Although the Nielsons and the United States reached a compromise settlement during  
 23 the pendency of an appeal, the underlying judgment in the amount of \$3.3 million is the  
 24 judgment that the state trial court considered the 'final judgment' for purposes of  
 25 applying the doctrine of collateral estoppel. . . . We hold the judgment entered in the  
 26 federal district court, determining that \$3.3 million was the amount that would fully  
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1 compensate the Nielsons for their injuries, is a final judgment on the merits for purposes  
2 of applying the doctrine of collateral estoppel.”).

3 Accordingly, res judicata is proper as to plaintiffs’ third and fourth causes of  
4 action against Travelers. Dkt. # 19 (Am. Compl.) ¶¶ 4.8-4.14.

### 5 **C. Compulsory Counterclaim**

6 Whether the Trust Funds’ state law claims against JMC are barred as compulsory  
7 counterclaims from the prior state action is a question of state law. *Pochiro v. Prudential*  
8 *Ins. Co. of Am.*, 827 F.2d 1246, 1249 (9th Cir. 1987). Washington’s compulsory  
9 counterclaim rule is identical to Rule 13(a) in all material respects for purposes of this  
10 analysis. *Cf.* Fed. R. Civ. Proc. 13(a) *with* Wash. Superior Ct. Civ. R. (“CR”) 13(a). CR  
11 13(a) requires a party to assert its compulsory counterclaims, those claims that arise out  
12 of the same transaction or occurrence that is the subject matter of the opposing party’s  
13 claim, or those claims are forever barred. *Atlas Supply, Inc. v. Realm, Inc.*, 170 Wash.  
14 App. 234, 238, 287, P.3d 606 (Wash. App. 2012). However, CR 13(a) excuses a  
15 defendant from asserting an otherwise compulsory counterclaim if “at the time the action  
16 was commenced the claim was the subject of another pending action[.]” CR 13(a).

17 This action originally did not contain the state law claims against JMC. Rather,  
18 plaintiffs had maintained a separate action against JMC with the state law claims. Case  
19 No. C12-789RAJ. However, on January 9, 2013, this court dismissed that action for lack  
20 of subject matter jurisdiction. Case No. 12-789, Dkt. # 25. On January 11, 2013,  
21 Travelers commenced its KCSC Case for declaratory relief against the Trust Funds. Dkt.  
22 # 28 at 56-62 (Ex. 16 to Maxwell Decl.). However, JMC was not a party in the KCSC  
23 Case. Rule 13(a) only applies when “the pleader has [a claim] against an opposing party”  
24 that arises out of the same transaction or occurrence that is the subject matter of the  
25 “opposing party’s claim” and does not require adding another party over whom the court  
26 cannot acquire jurisdiction. Fed. R. Civ. Proc. 13(a)(1); *see* Wash. Civ. R. 13(a). Since  
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1 JMC was not an “opposing party” in the KCSC Case, the Trust Funds were not required  
2 to assert any claims against that non-party.

3 Accordingly, the compulsory counterclaim rule is inapplicable to JMC.<sup>4</sup>

#### 4 **D. Supplemental Jurisdiction**

5 “[I]n any civil action of which the district courts have original jurisdiction, the  
6 district courts shall have supplemental jurisdiction over all other claims that are so related  
7 to claims in the action within such original jurisdiction that they form part of the same  
8 case or controversy under Article III of the United States Constitution.” 28 U.S.C. §  
9 1367(a). “The district courts may decline to exercise supplemental jurisdiction over a  
10 claim” if (1) the claim raises a novel or complex issue of State law, (2) the claim  
11 substantially predominates over the claim or claims over which the district court has  
12 original jurisdiction, (3) the district court has dismissed all claims over which it has  
13 original jurisdiction, (4) in exceptional circumstances, there are other compelling reasons  
14 for declining jurisdiction. *Id.* § 1367(c).

15 JMC relies on a number of facts that are not subject to judicial notice in arguing  
16 that the court should decline supplemental jurisdiction. This court has original  
17 jurisdiction over plaintiffs’ ERISA claims against the Lighthouse defendants, regardless  
18 of whether they are “defunct.” The court has supplemental jurisdiction over the state lien  
19 foreclosure claims because they arise out of the same set of facts surrounding the  
20 employer’s failure to make the required payments to the union’s trust that is actionable  
21 under ERISA. The fact that the Washington Supreme Court has now held that ERISA  
22 does not preempt statutes like RCW 39.08 and 60.28 means that, even if the court did not  
23 retain supplemental jurisdiction, Plaintiffs would be able to pursue this matter in state  
24 court. *W.G. Clark*, 2014 WL 1098013.

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27 <sup>4</sup> The court notes that the compulsory counterclaim rule applies to Travelers, and is  
another basis for properly granting Travelers’ motion to dismiss.



Nevertheless, the court exercises its discretion to retain supplemental jurisdiction over plaintiffs' state law claims against JMC.

**E. 12(b)(6)<sup>5</sup>**

Defendants rely on the payment bond to argue that plaintiffs failed to file suit within one year as required by the contract limitations period in the payment bond. Dkt. # 47 at 17. Plaintiffs misconstrue defendants' argument in arguing that the four-month period identified in RCW 60.28 is not a statute of limitations. Dkt. # 50 at 12.

Defendants have not challenged the four-month statutory restriction. Plaintiffs offer no argument against the one-year contractual limitations provision, aside from plaintiffs' general argument regarding documents that are outside of the complaint.

The Amended Complaint relies predominantly on the Performance Bond as the basis for the claims against JMC and Travelers. Dkt. # 19 (Am. Compl.) ¶ 3.53, 3.54, 3.57. Plaintiffs attached the Payment and Performance Bond as an exhibit in support of their motion for summary judgment and in support of their opposition to the pending motion to dismiss. Dkt. # 28 at 32-33 (Ex. 13 to Maxwell Decl. iso Pls.' Summ. J. Mot.); Dkt. # 51 at 6-7 (Ex. 1 to Maxwell Decl. iso Pls.' Opp'n). Since plaintiffs rely on the Performance Bond predominantly as the contractual basis for liability, and its accuracy is not reasonably in dispute where plaintiffs themselves provided and relied on the document, the court finds that it may properly consider the Performance Bond on this motion to dismiss. *See Ritchie*, 342 F.3d at 908.

Defendants argue that the performance bond requires the claimant to file a lawsuit no later than one year from the date on which the claimant filed a notice of claim of lien. Dkt. # 52 (Reply) at 13; *see also* Dkt. # 28 at 32-33 (Performance Bond, §§ 4.1, 11).

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<sup>5</sup> Even if the court did not find that the Trust Funds' claims against Travelers was barred by res judicata and subject to the compulsory counterclaim rule, the court's Rule 12(b)(6) analysis applies equally to Travelers. Accordingly, the court has referred to defendants Travelers and JMC collectively.

1 Plaintiffs allege that the notice of claim of lien and amended notice were filed with  
2 Washington State on January 6, 2012 and March 2, 2012, respectively. Dkt. # 19 (Am.  
3 Compl.) ¶ 3.55. Plaintiffs amended their complaint to add JMC and Travelers as  
4 defendants on April 3, 2013, more than a year after even the amended notice of claim.  
5 Nevertheless, the relation-back rule would allow amendments to relate back to the date of  
6 the original complaint, which was filed on February 16, 2012. Plaintiffs have not  
7 demonstrated that relation-back is appropriate here. Rule 15(c) allows relation-back to  
8 add a new party if that new party received such notice of the action and knew or should  
9 have known that the action would have been brought against it, but for a mistake  
10 concerning the proper party's identity. Fed. R. Civ. Proc. 15(c)(1)(C); Wash. Civ. R.  
11 15(c).

12 Plaintiffs have not alleged any facts that JMC or Travelers would have been  
13 named as a party but for a mistake concerning the proper party's identity, nor could they  
14 where there was no mistake as to the proper party's identity, given that plaintiffs filed a  
15 separate action in May 2012 against Travelers and JMC alleging the same claims. *Puget*  
16 *Sound Elec. Workers Health & Welfare Trust v. Travelers Cas. & Sur. Co. of Am.*, Case  
17 No. C12-789RAJ, Dkt. # 1. Even if relation-back was appropriate under Rule 15(c),  
18 plaintiffs have not provided any arguments regarding the fact that this case was still filed  
19 more than one year after the initial notice of lien claim was filed, on February 16, 2012,  
20 or whether the contractual limitations provision applies to the amended notice of lien  
21 claim.

22 Thus, the court finds that plaintiffs have failed to state a claim against JMC and  
23 Travelers.

#### 24 IV. CONCLUSION

25 For all the foregoing reasons, the court GRANTS JMC's and Traveler's motion to  
26 dismiss.

1 Dated this 3rd day of April, 2014.

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4 The Honorable Richard A. Jones  
5 United States District Judge  
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